

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PROJECT VERITAS,

Plaintiff,

v.

THE LELAND STANFORD JUNIOR
UNIVERSITY and THE UNIVERSITY
OF WASHINGTON,

Defendants.

Case No. 2:21-cv-01326-TSZ

DEFENDANTS' OMNIBUS REPLY TO
PLAINTIFF PROJECT VERITAS'
OPPOSITION TO DEFENDANTS' MOTIONS
TO DISMISS

NOTING DATE: March 25, 2022

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

Project Veritas’ omnibus opposition (Dkt. 50) (“Opposition” or “Opp.”) largely ignores the points made in Defendants’ moving papers.¹ Instead, Plaintiff focuses on a lengthy academic discourse on the applicability of Washington’s Anti-SLAPP statute and a defense of cherry-picked portions of the Project Veritas Video. These efforts do not rebut Defendants’ arguments that Project Veritas has failed to plausibly allege two essential elements of its claim for defamation, falsity and actual malice.

With regard to falsity, Project Veritas claimed that its Video showed “massive criminal voter fraud caught irrefutably on video tape” and constituted “undeniable video proof of systemic voter fraud.” In the context of statements like these, Defendants’ Blog Post criticized elements of the Video as “misleading” and “without factual support,” and noted that subsequent reporting had similarly criticized some of the Video’s claims. Defendants’ Motions explained that Project Veritas cannot plausibly allege that this language in the Blog Post is false because the Video itself does not live up to such claims, and because subsequent critical reporting in fact existed at the time the Blog Post was published. These are clear determinations that this Court can readily make by taking judicial notice of the Video and the existence of contemporaneous media that analyzed the Video. This does not involve a fact-finding exercise, as Plaintiff argues, because what the Video does *not* say, and what the media *do* say about the Video, is self-evident and undisputed. In its Opposition, Plaintiff fails to acknowledge the Video’s inflated claims of massive criminal election conduct, much less explain why it is plausibly false to say that such claims are “misleading” or “without factual support.” On this fundamental failing alone, the complaint should be dismissed.

As for actual malice, the Opposition first wrongly denies that public figure defamation plaintiffs like Project Veritas face a “demanding burden” in pleading this element, and then

¹ Dkt. 37 (“Stanford Mot.”); Dkt. 40 (“UW Mot.”; and with Stanford Mot., “Defendants’ Motions”).

1 insists that the Complaint’s scattershot allegations of actual malice add up to more than the sum
 2 of their parts. These parts consist of several unremarkable allegations—that the Blog Post
 3 authors are bound by university policies, did not conduct first person research into the Video,
 4 stood by their work despite Project Veritas’ retraction demands, and held personal political
 5 opinions—and the remarkable allegation that Defendants and *The New York Times* jointly
 6 conceived and executed the Blog Post so the Times would have a pretext to write an article
 7 attacking Project Veritas’ journalism. These allegations do not plausibly plead actual malice and
 8 none of them plausibly gives rise to any inference of actual knowledge of falsity.

9 Based on Plaintiff’s failure to plead either of these elements of its defamation claim, the
 10 Court should dismiss the Complaint. Moreover, such dismissal accords with the emphatic
 11 recognition by the United States and Washington Supreme Courts that “speech concerning public
 12 affairs is more than self-expression; it is the essence of self-government,” and that the “First and
 13 Fourteenth Amendments embody our ‘profound national commitment to the principle that debate
 14 on public issues should be uninhibited, robust, and wide-open.’” *Herron v. Tribune Publ’g Co.,*
 15 *Inc.*, 108 Wn.2d 162, 171 (1987) (quoting *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964)).

16 **II. THE PARTIES AGREE THAT THE COURT SHOULD EVALUATE**

17 **DEFENDANTS’ MOTIONS UNDER RULE 12**

18 Plaintiff’s Opposition argues against the applicability of Washington’s Anti-SLAPP
 19 statute, but as Defendants explained in their motions (as well as other filings), Plaintiff’s
 20 arguments conflict with the law of this Circuit and this Court. In any event, regardless of the
 21 applicability of Washington’s Anti-SLAPP statute, the parties agree that under Ninth Circuit
 22 precedent this Court “should evaluate the motions under the framework set out in Rule 12(b)(6).”
 23 Opp. at 24 n.9; *see also* Stanford Mot. at 10 (“Where, as here, an anti-SLAPP motion filed in
 24 federal court ‘challenges only the legal sufficiency of a claim, a district court should apply the
 25 Federal Rule of Civil Procedure 12(b)(6) standard and consider whether a claim is properly
 26 stated.” (quoting *Planned Parenthood Federation of America, Inc. v. Center for Medical*

1 *Progress*, 890 F.3d 828, 834 (9th Cir. 2018))). Further, the Court has already determined that
 2 Defendants’ “motions were timely filed.” Dkt. 48.² Thus, whether Defendants’ Motions are
 3 denominated as “anti-SLAPP motions” or “motions to dismiss” does not affect how the motions
 4 must be analyzed and ultimately decided in federal court. *See CoreCivic Inc. v. Candide Grp.*
 5 *LLC*, No. C-20-03792-WHA, 2021 WL 1267259, at *5 (N.D. Cal. Apr. 6, 2021) (“Court was
 6 obliged to treat [anti-SLAPP motion] as a[] Rule 12 motion . . . per *Planned Parenthood*.”).

7 The applicability of Washington’s Anti-SLAPP statute impacts only Defendants’
 8 entitlement to attorneys’ fees if they prevail on the instant motions. *See Stanford Mot.* at 8 (“If
 9 the moving party prevails, the court must also award costs, attorneys’ fees, and litigation
 10 expenses related to the motion.” (citing RCW 4.105.090)); *see also CoreCivic*, 2021 WL
 11 1267259, at *6 (prevailing defendant can collect fees on anti-SLAPP motion “before and after
 12 *Shady Grove*” because “there is no conflict with Rule 11”).³ But in the event Defendants do
 13 prevail, they have no objection to the Court deferring a fees determination until after the Ninth
 14 Circuit weighs in on Plaintiff’s counsel’s appeal in *CoreCivic*, which is “fully briefed and
 15 awaiting oral argument.” *Opp.* at 21 n.7.⁴

16 ² Plaintiff suggests it may appeal this determination. *See Opp.* at 25 (“Veritas recognizes that this Court has allowed
 17 Defendants’ untimely motions and respects that ruling, but notes its continuing objection here to preserve the issue.”
 18 (footnote misciting Dkt. 36 omitted)). But the Court has broad discretion under the Federal Rules of Civil Procedure
 19 to determine that Defendants’ Motions were timely. *See, e.g., Austin v. Walker*, 800 F. App’x 563, 564 (9th Cir.
 20 2020). Notwithstanding that the Court already determined that these motions were timely filed, Project Veritas has
 also identified no prejudice based on the timing of Defendants’ Motions. Nor could it, given that it waited a full
 year after the publication of the Blog Post to file this lawsuit and asked Defendants to join in a request to extend the
 briefing schedule on Defendants’ Motions by several weeks for its own convenience. *See Dkt.* 45.

21 ³ In *CoreCivic*, the Court explained that the analogous attorneys’ fees provision in California’s anti-SLAPP statute
 22 “establishes a *substantive* right to recover attorney’s fees when defending against a defamation action under
 23 California law where the defamation alleged touches on a public issue and the alleged defamer prevails”—*i.e.*, “a
 24 cause of action under state law to recover attorney’s fees.” *Id.* Moreover, the Court recognized that the Ninth
 Circuit has “regularly allowed attorney’s fees recovery under state law without pausing over Rule 11, before and
 after *Shady Grove*,” because “once a state attorney’s fees provision is deemed *substantive*, not procedural, there is
 no conflict with Rule 11.” *Id.* (listing cases).

25 ⁴ As noted in its motion, the University of Washington acknowledges the language of RCW 4.105.010(3)(a)(i) but
 26 joins Stanford’s motion under Washington’s Anti-SLAPP statute because application of the “governmental unit”
 exception to University personnel conflicts with the traditional First Amendment protections afforded to the
 academic community. *See UW Mot.* at 4-6. In any event, for the reasons described herein, Rule 12(b)(6) supplies
 the standard for adjudication of this motion whether or not it is considered under RCW Chapter 4.105.

1 The parties also agree that “[u]nder Rule 12, a federal court evaluating a motion to
 2 dismiss before discovery may ‘consider . . . matters properly subject to judicial notice.’” Opp. at
 3 19 (quoting *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012)). But Project Veritas
 4 inconsistently asserts that “under Rule 12(d), a federal court ‘must’ convert a Rule 12 motion to
 5 a Rule 56 motion where, as here, evidence is **presented** outside the four corners of the
 6 complaint.” *Id.* (emphasis added). This is not true for two reasons. First, as noted above and
 7 acknowledged by Plaintiff, a Court can consider evidence outside the pleadings under Rule 12 if
 8 that evidence is properly subject to judicial notice. Second, as Plaintiff also acknowledges, Rule
 9 12(d) requires such conversion to Rule 56 only “if the Court **considers and credits** . . . outside-
 10 the-pleadings materials” that are **not** subject to judicial notice. *Id.* at 34 n.19 (emphasis added).

11 And as set forth at length in Defendants’ Opposition to Plaintiff’s Rule 12(d) and 56(d)
 12 Motion, these two reasons also demonstrate why the Court should not convert Defendants’
 13 Motions. First, Defendants ask the Court to consider news articles, but only for their existence
 14 and subject matter, not for their underlying truth, a proper purpose of judicial notice. In short,
 15 the court should notice what the cited media said in response to the Video, but not engage in
 16 fact-finding to decide whether the media’s observations were accurate or inaccurate, which is
 17 what Plaintiff erroneously suggests. Second, to the extent that the Court believes Defendants
 18 seek judicial notice of any evidence for an improper purpose, both Defendants and Project
 19 Veritas agree that the Court should decline to consider the evidence for that purpose rather than
 20 convert Defendants’ Motions. *See generally* Dkt. 53 (Defendants’ Opposition to Plaintiff’s Rule
 21 12(d) and 56(d) Motion).⁵ And with the standard for decision so clarified, there is no question
 22 that the Complaint fails under established 12(b)(6) standards.

23
 24 ⁵ Ironically, the only party that asks the Court to consider a judicially noticeable document for its underlying truth is
 25 Project Veritas. *See* Opp. at 9 n.4 (citing to the Answer in Project Veritas’ litigation with the Times and asking the
 26 Court to accept as true the Times’ admission therein “that it received an embargoed copy of the EIP Report before it
 was published”). But Defendants do not dispute that they sent the Times an early copy of the Blog Post, only
 Project Veritas’ implausible leap that this uncontroversial media practice, commonly used to encourage reporting on
 the information people wish to have published, in any way suggests actual malice. *See infra* § IV.B.

III. PLAINTIFF DOES NOT ADEQUATELY ALLEGE FALSITY

As noted in Defendants' Motions, Plaintiff's Complaint fails to adequately allege falsity. Plaintiff's Opposition does nothing to counter that reality. In their motions, Defendants identified specific claims and statements made in the Project Veritas Video and explained how they either (i) are not supported by evidence in the Video, or (ii) were called into question by other media. *See* Stanford Mot. at 14-15; UW Mot. at 7-13. Rather than addressing each of the challenged statements and explaining how they actually *are* supported with evidence within the Video, Project Veritas ignores virtually all of them. Instead, Plaintiff recharacterizes the Blog Post as conveying an "unmistakable message" that Veritas "violated a fundamental tenet of journalism by intentionally lying to its viewers." Opp. at 30. By mischaracterizing the Blog Post to promote a narrative that Defendants' Motions ask the Court to determine what is "true" and what are "lies," Plaintiff dodges the straightforward questions in Defendants' Motions.

Unable to defend the unsupported claims in the Video, Project Veritas also argues that its Complaint can be salvaged by an exceedingly low pleading standard, and that ruling in Defendants' favor would impermissibly "require this Court to pick and choose from contested interpretations of the Video Report." Opp. at 33. Not so. Defendants do not ask this Court to "interpret" the Video, let alone make factual findings whether the Video's claims of election fraud are true or false. This defamation case is about the truth and susceptibility to defamatory meaning of three statements in Defendants' Blog Post. Defendants merely ask the Court to view the Video to confirm that several claims were made without identifying factual "support"—just as the Blog Post plainly and simply asserts. Similarly, Defendants do not ask this Court to weigh the accuracy of third-party news stories. Defendants merely ask the Court to confirm the reality that those stories call into question—or "debunk"—certain claims within the Video. Because the Video is incorporated in the Complaint, and the Court can take judicial notice of what "existed" in public third-party media, evaluating the allegations of falsity can be made on the undisputed

content of the Complaint, Video, and media, and does not involve credibility determinations, drawing competing inferences, or other fact-finding.

A. The “Low Standard” For Complaints On 12(b)(6) Does Not Salvage Claims

Project Veritas begins the defense of its deficient Complaint by stressing its view that the pleading standard necessary to survive a motion to dismiss is low. Opp. at 14. Indeed, Plaintiff goes so far as to advise that the Court should uphold the Complaint even if, as Project Veritas seems to concede, a “savvy judge” would view its allegations as “improbable.” *Id.* While the language that Project Veritas has plucked from case law is accurately quoted, it ignores several key limitations to the benefit of the doubt to which its pleadings are entitled. For example, while the Court must accept as true all the Complaint’s well-pleaded factual allegations, the Court is not “required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1008 (9th Cir. 2018) (internal quotation marks omitted). “Nor is the Court required to accept ‘conclusory legal allegations cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.’” *Phillips v. Seattle Times Co.*, 818 F. Supp. 2d 1277, 1283 (W.D. Wash. 2011) (quoting *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994)).

In this case, Project Veritas alleges that Defendants’ Blog Post was defamatory because it falsely stated that the Video contained assertions that were not supported by evidence. This Court is well-suited to the task of examining the Video to determine, on its face, whether it made unqualified claims of election fraud that were not supported by evidence presented. In so doing, the Court can verify that the Blog Post’s statements were “true” and nondefamatory. Furthermore, this assessment can be made without weighing issues of credibility.⁶

⁶ Although Project Veritas concedes that “whether a claim does or does not have factual support is a matter of verifiable fact,” Opp. at 27, it later contradicts itself by claiming that the Court would have to make credibility determinations in order to judge whether the Blog Post’s claim that the Video contained statements that were not supported is true or not. *Id.* at 33 (“Defendants’ truthfulness arguments require this Court to pick and choose from among contested interpretations of the Video Report and to discredit the allegations of falsity in the Complaint.”).

B. Plaintiff Does Not Dispute That The “Sting” Of The Blog Post Is True

As Defendants point out in their motions, Project Veritas identifies only three sentences in the Blog Post that it claims are false: (1) “The video made several falsifiable claims that have either been debunked by subsequent reporting or are without any factual support,” (2) “As the video calls into question the integrity of the election using misleading or inaccurate information, we determined this video to be a form of election disinformation,” and (3) “[T]his video stands as an interesting example of what a domestic, coordinated elite disinformation campaign looks like in the United States.” To the extent the first two statements are susceptible to defamatory meaning, they are true and verifiable by looking solely at the Video itself and the face of the news coverage commenting on the Video. Because these first two statements are not defamatory, neither is the third, which defines “disinformation” simply as having either of the first two characteristics (being “unsupported” and/or “debunked”).⁷ The Blog Post makes no ultimate claim about truth or falsity beyond these two observations.

Project Veritas does not dispute that, in order to state a claim for defamation, a plaintiff must allege falsity—and to the extent that a defendant can demonstrate the truth of the challenged statements on the face of the pleadings and judicially noticeable documents, the allegations fail as a matter of law. *See, e.g., Phillips*, 818 F. Supp. 2d at 1284 (“Defamatory meaning may not be imputed to true statements.” (quoting *Lee v. Columbian, Inc.*, 64 Wn. App. 534, 538 (1991))). Further, as this Court has noted, “a defamation defendant need not prove the literal truth of every claimed defamatory statement,” but “need only show that the statement is substantively true or that the gist of the story, the portion that contains the ‘sting’ is true.” *Paterson v. Little Brown*, 502 F. Supp. 2d 1124, 1133 (W.D. Wash. 2007). In this case, the

⁷ The characterization of the video’s content as “disinformation” is incorporated into statements (1) and (2), above. Indeed, the meaning of “disinformation” is defined in terms of calling into question the election based on “misleading or inaccurate information.” Thus, to the extent statements (1) and (2) are true, this third statement cannot be false. In addition, the Complaint does not allege that the Blog Post’s description of the coordinated manner in which the Video was disseminated and promoted—its undisputed core subject—was false in any way.

1 challenged statements’ clear “gist” or “sting” is that the Video contains statements that are not
 2 supported by the facts it reports, and that subsequent news articles called out the Video for that
 3 lack of support.

4 **1. Plaintiff Does Not Dispute that the Video “made several falsifiable**
 5 **claims that . . . are without any factual support”**

6 In their motions, Defendants identify multiple statements from the Video that lack factual
 7 support—thus demonstrating that the Blog Post’s challenged defamatory statements are true.
 8 Project Veritas fails to even try to dispute the unsupported nature of the specific claims
 9 Defendants challenged, or suggest that the Video contains any evidence that could buttress the
 10 statements. This abdication alone is sufficient to justify granting Defendants’ Motions.

11 By way of example, Defendants identified the Video’s assertion that it had demonstrated
 12 a “*massive criminal voter fraud caught irrefutably on video tape*,” as a statement made in the
 13 Video that lacked support. UW Mot. at 11. As Defendants pointed out in their briefs, the Video
 14 is so heavily edited that the Snapchat snippets that purport to show ballot harvesting amount to
 15 unsupported hearsay in a foreign language, lacking context, and fail to provide anything
 16 remotely resembling supporting evidence of “massive criminal voter fraud.” And even when
 17 given the interpretation advanced in the Video, the clips do not evidence any crimes “caught
 18 irrefutably on videotape.” Video at 15:55-16:04; Transcript at 19:4-5. For example, Plaintiff did
 19 not surreptitiously record any individual exchanging cash for ballots or otherwise prove a crime.

20 Indeed, even if actual ballots were collected, third-party collection of ballots for delivery
 21 to polling stations was legal for much of the summer during the 2020 election cycle in
 22 Minnesota. *See DSCC v. Simon*, No. 62-CV-20-585 (Minn. Sec. Jud. Dist., Jul. 28, 2020)
 23 (holding ballot harvesting for more than three registered voters to be legal); *DSCC v. Simon*, No.
 24 A20-1017 (Minn. Sup. Ct., Sept. 4, 2020) (overturning *DSCC*). In its Opposition, Project Veritas
 25 does not dispute this, thereby conceding that this claim is not supported. This is critical because
 26 this statement summarizes the foundational message conveyed by the Video, and places all the

1 other statements in the Video in important context. The fact that Project Veritas is not able to
 2 even suggest that the Video provided evidence to support its expansive claim of criminal conduct
 3 reveals the accuracy of the observations in the Blog Post.

4 Lest there be any question that this was the primary thrust that Project Veritas intended to
 5 convey in the Video, on September 24, 2020, just days before the Video was released, Mr.
 6 O’Keefe tweeted out a message that Project Veritas would soon be releasing, “UNDENIABLE
 7 VIDEO PROOF OF SYSTEMIC VOTER FRAUD.” Stanford Mot. at 1, 3, 14. Two days later,
 8 Project Veritas’ official Twitter account tweeted that it had “obtained undeniable video proof of
 9 systemic voter fraud.” *Id.* Both of these statements were highlighted in Defendants’ briefs, but,
 10 again, Project Veritas fails to address them in its Opposition.

11 The Project Veritas Video focuses heavily on Snapchat videos purportedly of a man
 12 named Liban Mohamed, who is also identified by aliases, whose identity as an agent of Rep.
 13 Ilhan Omar is confirmed by no one, and who waives a handful of illegible envelopes in the air
 14 while making vague declarations about collecting ballots in an unidentified foreign language,
 15 translated by who knows whom. The Video claims that, “***Liban Mohamed’s [Snapchat] video***
 16 ***shows him violating Minnesota’s election laws, which prohibit someone from collecting more***
 17 ***than three ballots.***” As Defendants point out, this statement is not supported by anything
 18 approaching confirmatory evidence. UW Mot. at 11-13. No secondary source supports any of
 19 the information, there is no identifying information on any of the purported ballots (from what is
 20 shown on the grainy video they could easily be empty envelopes bought at a stationery store),
 21 there is no inspection by Project Veritas or anyone else of the ballots themselves, and no voters
 22 confirmed that they provided their ballot to Mohamed as part of an illegal scheme.

23 This Court is well suited to assess whether a purely hearsay Snapchat video did or did not
 24 corroborate a “***massive criminal voter fraud caught irrefutably on video tape.***” Assessing
 25 whether EIP’s statement was literally true based simply on viewing the Video does *not* require
 26 this Court to determine the ultimate truth or falsity of the claims Project Veritas makes about

1 “systemic voter fraud.” The allegation that the Blog Post *falsely* stated this claim lacked support
 2 is implausible on the face of the Video, has not been contested, and should be dismissed.

3 There are additional examples of hearsay claims without support. For example, Project
 4 Veritas promised to reveal an “***Ilhan Omar connected Ballot Harvester in cash-for-ballots***
 5 ***scheme.***” In the snippets shown in the Video, Mr. Mohamed never mentions Representative
 6 Omar or anyone associated with her and never claims he is paid by her agents as part of a
 7 conspiracy to harvest ballots. Omar Jamal, who is interviewed in the Video, claims only that he
 8 “think[s]” that those involved in the alleged voter fraud work with Representative Omar but
 9 provides no support to back up that claim. Transcript at 5:24-25. One anonymous source (by
 10 definition unconfirmed) says that ballot harvesters bought absentee ballots with money from Ali
 11 Isse Gainey, who worked on Representative Omar’s campaign, but no support is presented in the
 12 Video to confirm any of this. Transcript at 11:5-7. No ballot is examined, no identifying
 13 information for any ballot is shown, no ballot is authenticated, and not a single identifiable
 14 Minneapolis voter corroborates any information presented in the Video about acquiring or
 15 “harvesting” ballots. Transcript at 5:10; 10:6; 15:14-15. Of course, the Video also lacks any
 16 forensic financial evidence showing illicit payments that were allegedly used to buy votes in a
 17 criminal scheme. Project Veritas presents no argument or evidence in its Opposition that would
 18 support this statement, or the Video’s claims that “[*the*] investigation into this ballot harvesting
 19 *ring demonstrated clearly how these unscrupulous operators exploit the elderly and immigrant*
 20 *communities—and have turned the sacred ballot box into a commodities trading desk,*” and
 21 that “[*t*]his appears to be an effort that is very systemic and very coordinated.” Transcript at
 22 15:15-16. Project Veritas simply ignores these statements.

23 Because Project Veritas cannot support its overstated claims, it tries to walk them back
 24 by nitpicking at its own language, arguing, for example, that some claims were qualified by
 25 saying “*sources allege*” Congresswoman Omar is involved (not that she is actually involved), or
 26 only that it “*appears*” to be a systemic and coordinated voter-fraud effort. Plaintiff’s resort to

1 after-the-fact parsing fails to overcome the thrust of the Video, which Project Veritas proclaimed
2 to be “irrefutable” and “undeniable” evidence of massive voter fraud. On its face, it is not.

3 Project Veritas also tries to evade its pleading burden by suggesting that if the Court were
4 to examine the Video to determine whether or not there were claims made without support, it
5 would require the Court to make credibility determinations and, “pick and choose from contested
6 interpretations of the Video Report.” Opp. at 33. But that is not the case. The Court is perfectly
7 capable of viewing the Video to determine whether it provides support for the claims that it
8 contains “irrefutable” evidence of a crime or “undeniable” proof of wrongdoing. If there is not
9 support for these claims, then the simple and literal assertion in Defendants’ Blog Post that the
10 Video contains “several statements” that lack any support is true and cannot constitute
11 defamation. *Phillips*, 818 F. Supp. 2d at 1284 (“Defamatory meaning may not be imputed to true
12 statements”) (quoting *Lee*, 64 Wn. App. at 538)).

13 **2. Plaintiff Does Not Dispute that the Video “made several falsifiable**
14 **claims that have . . . been debunked by subsequent reporting”**

15 Project Veritas also does not dispute in its Opposition that numerous third-party news
16 reports examined the allegations made in the Video and concluded that many of the assertions
17 therein were not supported by the evidence offered. It could not. As detailed in Defendants’
18 Motions, such articles were numerous and detailed. Instead, Project Veritas asserts two lines of
19 attack to try to evade the truth of Defendants’ undisputed observation. First, it asserts that these
20 articles did not (in Project Veritas’ view) “debunk” the Video’s statements because one technical
21 definition of “debunk” is “to prove false”—rather than to call into question underlying factual
22 support. Second, it again asserts that for the Court to find that the articles “debunk” the Video, it
23 would have to impermissibly weigh the news reports’ credibility. Neither argument is availing.

24 Project Veritas’ attempt to rely on what it claims is the definition of the term “debunk”
25 cannot salvage its complaint. As noted above, in determining whether a defamation defendant
26 can show that a challenged statement is true, courts do not dissect the statement in the way

1 Project Veritas suggests. Rather courts look to the “gist” or the “sting” of the statement, and if
 2 that gist is substantially true, then the allegation of defamation cannot stand. As noted in
 3 Defendants’ Motions, to “debunk” means “to show that something is less important, less good,
 4 or less true than it has been made to appear.” *Debunk*, Cambridge Dictionary (2022); *see also*
 5 *Debunk*, American Heritage College Dictionary (2022) (defining “debunk” as “[t]o expose or
 6 ridicule the falseness, sham, or exaggerated claims of”); *Debunk*, Dictionary.com (2022)
 7 (defining “debunk” as “to expose or excoriate (a claim, assertion, sentiment, etc.) as being
 8 pretentious, false, or exaggerated”); UW Mot. at 7. Project Veritas ignores these definitions and
 9 focuses on a secondary definition, “to prove false,” arguing that the news articles did not
 10 technically “debunk” the statements in the Video according to this definition. This semantic
 11 argument misses the point. As an initial matter, as the varied dictionary definitions make clear,
 12 the term “debunk” is an imprecise and colloquial term, similar in nature to terms like “scam,”
 13 “fake,” or “phony,” which this Court has recognized as being imprecise and therefore unprovable
 14 and unsusceptible to a defamatory meaning. *See, e.g., Paterson*, 502 F. Supp. 2d at 1135.
 15 Furthermore, the “gist” of the Blog Post’s opening paragraph is not to provide a detailed analysis
 16 of the flaws in the various claims made in the Video, but merely to point out that some of the
 17 claims were not supported by evidence or had been called into question by subsequent news
 18 reports. That is a true and accurate statement—and Project Veritas does not even try to dispute
 19 that conclusion in its Opposition. Plucking a secondary definition from the dictionary cannot
 20 alter the meaning of the Blog Post’s statement such that it salvages a deficient pleading.

21 Project Veritas’ claim that the Court cannot examine the third-party news articles without
 22 weighing their credibility is also incorrect. The mere existence of the articles is evidence that
 23 certain statements in the Video had been debunked—*i.e.*, called into question or ridiculed as
 24 exaggeration. Whether the criticisms were justified or not, their mere existence substantiates the
 25 gist of the observation made in the Blog Post. The Court can plainly assess the undisputed
 26 ***existence*** of the criticisms without weighing the ***credibility*** of the articles. Any reader of the

1 Blog Post also had the capability to look at other media and make their own assessment whether
2 the media “debunked” the Video, however they might define or interpret the term.

3 For example, Defendants’ Motions note that on September 28, 2020, Minneapolis Fox
4 affiliate KMSP-TV published a news article on its website titled, *Project Veritas Alleges*
5 *Election Fraud, Evidence Scant* (Brand Decl. Ex. 8). The criticisms in that article include:

6 The meat of the Project Veritas report, posted on YouTube Sunday night, was a
7 Snapchat video from the brother of newly elected City Councilman Jamal Hassan.
8 In the video, Liban Mohamed, is seen driving his car and bragging about money in
9 politics with what appears to be dozens of mailed in ballots.

10 “Money is everything. Money is the king of this world. If you don’t have money
11 you should not be here. Period,” said Liban Mohamed in the video. Attempts to
12 reach Liban Mohamed through his social media accounts were not successful.

13 For O’Keefe the implication was clear: Money was being exchanged for votes, and
14 those ballots were being “harvested.”

15 But the full context of the video is unclear. Were the ballots sealed? Had they
16 already been filled out? Where did the ballots come from?

17 And the timing of that video may be critical. The practice of turning in ballots that
18 are not your own – or, “harvesting” – was in flux this summer with three separate
19 court decisions.

20 These comments rely solely on an examination of the Video itself.

21 Similarly, the Sahan Journal’s September 28, 2020 article titled, *How did an August*
22 *primary election in Minneapolis turn into a national right-wing disinformation campaign against*
23 *absentee ballots?* (Brand Decl. Ex. 10) did nothing more than summarize the evidence that
24 existed for various claims within the Video:

25 It’s safe to say that there isn’t any solid evidence of wrongdoing. Project Veritas’
26 report presents only the word of a few sources, most of whom are anonymous, and
a few videos from Snapchat, none of which clearly show fraudulent ballots.

This pithy summary, and the KMSP excerpt above, demonstrate exactly what was intended by
EIP’s statement that the Video had been debunked. As do all the articles cited by Defendants.

3. The Challenged Statements Are Opinions

Project Veritas also fails to adequately dispute the reality that the statements in the Blog
Post’s introduction are more akin to opinions regarding the adequacy of the Video’s support,

1 rather than definitive statements of fact. Project Veritas attempts to turn back Defendants’
 2 argument by pointing out that words like “debunk,” “misleading,” and “disinformation” all have
 3 dictionary definitions and the Blog Post’s statements are therefore, “capable of being interpreted
 4 as factual assertions.” Opp. at 27-28. But the fact that words have meanings that could be
 5 interpreted as negative factual assertions does not place them outside the realm of opinion.
 6 Indeed, terms like “rip-off,” “fraud,” and “scam” all also have dictionary definitions that are
 7 more derogatory and definitive than the Blog Post’s terms, and yet this Court has noted that
 8 those terms, as often used, “are imprecise hyperbole, incapable of defamatory meaning.”
 9 *Paterson*, 502 F. Supp. 2d at 1135.

10 More importantly, Project Veritas injected itself into one of the most important and hotly
 11 debated issues of the day—the security of the 2020 election. The notion that it is entitled to
 12 weigh in on that topic, claiming to have provided “irrefutable” evidence of fraud and
 13 “undeniable” video evidence of wrongdoing, and then prevent others from expressing opinions
 14 about the veracity of its reporting and the adequacy of the support provided for those claims flies
 15 in the face of the rights the First Amendment was intended to protect. Project Veritas’ attempt to
 16 use the courts to squelch debate is improper and threatens to open a Pandora’s box that would
 17 lead to judges making decisions about what opinions are appropriate and what opinions are not.

18 **IV. PLAINTIFF DOES NOT ADEQUATELY ALLEGE ACTUAL MALICE**

19 In their opening briefs, Defendants clearly articulated why the Complaint fails to
 20 plausibly plead actual malice—*i.e.*, that the Blog Post was published with actual knowledge of or
 21 reckless disregard for its falsity. Stanford Mot. at 17-19; UW Mot. at 14-19. In response,
 22 Project Veritas first attempts to minimize its burden to plead actual malice, and then insists that it
 23 has met this reduced burden of its own construction. Opp. at 36-39. Neither argument avoids
 24 the inevitable conclusion that the Complaint does not plausibly allege actual malice.
 25
 26

1 A. Pleading Actual Malice Is A Demanding Burden

2 “[T]he [Supreme] Court has frequently reaffirmed that speech on public issues occupies
3 the ‘highest rung of the hierarchy of First Amendment values,’ and is entitled to special
4 protection.” *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 759 (1985)
5 (quoting *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982)). No current public
6 issue is deserving of greater deference than the nation’s ongoing debate over election integrity.
7 This principle of protecting speech has translated into a requirement that a defamation plaintiff
8 meet a “demanding burden” in pleading actual malice. *See* Stanford Mot. at 17-18; UW Mot. at
9 14-16. Plaintiff, an acknowledged public figure, would trample these bedrock principles.⁸

10 Plaintiff attempts to duck the “demanding burden” required to plead actual malice with a
11 string cite in support of the uncontested proposition that Rule 8 rather than Rule 9 of the Federal
12 Rules of Civil Procedure sets the standard to plead malice. *See* Opp. at 36. But the cases cited
13 by Defendants and ignored by Project Veritas identify a “demanding burden” to plead actual
14 malice ***under Rule 8***. *Tull v. Higgins*, No. 21-CV-01566-DMR, 2021 WL 6116971, at *8 (N.D.
15 Cal. Dec. 27, 2021); *Resolute Forest Prod., Inc. v. Greenpeace Int’l*, 302 F. Supp. 3d 1005, 1018
16 (N.D. Cal. 2017); *Wynn v. Chanos*, 75 F. Supp. 3d 1228, 1239 (N.D. Cal. 2014).

17 Further, if one looks past the cherry-picked quotations in the Opposition’s string cite, the
18 cases Plaintiff relies on either fully accord with this demanding burden or are irrelevant. For
19 example, the *Iqbal* excerpt on which Project Veritas relies reads in full as follows:

20 It is true that Rule 9(b) requires particularity when pleading “fraud or mistake,”
21 while allowing “[m]alice, intent, knowledge, and other conditions of a person’s
22 mind [to] be alleged generally.” But “generally” is a relative term. In the context
23 of Rule 9, it is to be compared to the particularity requirement applicable to fraud
or mistake. Rule 9 merely excuses a party from pleading discriminatory intent
under an elevated pleading standard. It does not give him license to evade the less
rigid—though still operative—strictures of Rule 8. And Rule 8 does not empower

24 ⁸ Defendants pointed out shortcomings in published information on a matter of the utmost public importance, the
25 “gist” of which is not contested by Plaintiff. The First Amendment exists to protect and promote precisely this kind
26 of speech, and courts must exercise care to avoid squelching it by entertaining implausible claims from a serial
defamation litigant such as Project Veritas. *See* <https://www.projectveritas.com/news/ongoing-litigation/> (listing
selected lawsuits in support of Plaintiff’s ongoing fundraising activity).

respondent to plead the bare elements of his cause of action, affix the label “general allegation,” and expect his complaint to survive a motion to dismiss.

Ashcroft v. Iqbal, 556 U.S. 662, 686-87 (2009) (citation omitted) (language quoted in Opp. at 36 underlined). Similarly, Plaintiff cites the *Peterson* court’s statement that it “‘will, consistent with the overwhelming weight of post-*Iqbal* authority, address whether Plaintiff has plausibly alleged that Defendants acted with actual malice at the pleading stage.’” Opp. at 36 (quoting *Peterson v. Gannett Co. Inc.*, No. CV-20-00106-PHX-MTL, 2020 WL 1935520, at *8 (D. Ariz. Apr. 22, 2020)). But *Peterson* also recognized *Iqbal* as “holding that actual malice is subject to a heightened pleading standard,” and dismissed the complaint because plaintiff had “failed to satisfy the ‘demanding burden’ for pleading actual malice.” *Peterson*, 2020 WL 1935520, at *7-8; *see also Miller v. Sawant*, 18 F.4th 328, 337 (9th Cir. 2021) (“plaintiff asserting a state-law defamation claim in federal court need only satisfy Rule 8; a state’s heightened pleading requirement does not apply” (language quoted in Opp. at 36 underlined)).

In sum, Project Veritas offers no meaningful response to the case law holding that the requirements of actual malice and the strictures of Rule 8 combine to create a “‘demanding burden’” that can only be met by “specific allegations of a speaker’s mindset,” not mere “‘general allegations that a defendant should have known or should have investigated the truth of his or her statements.’” *Resolute Forest Prod.*, 302 F. Supp. 3d at 1018 (quoting *Wynn v. Chanos*, 75 F. Supp. 3d at 1239); *see also id.* (“the court must ‘disregard the portions of the complaint where [the plaintiff] alleges in a purely conclusory manner that the defendants had a particular state of mind in publishing the statements’ (quoting *Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 703-04 (11th Cir. 2016)); *id.* (“‘States of mind may be pleaded generally, but a plaintiff still must point to details sufficient to render a claim plausible.’” (quoting *Pippen v. NBCUniversal Media, LLC*, 734 F.3d 610, 614 (7th Cir. 2013))).⁹

⁹ *Accord* Order Granting Motion to Dismiss, *Project Veritas v. Cable News Network, Inc.*, No. 1:21-CV-01722-SCJ (N.D. Ga. Mar. 17, 2022), ECF No. 27 at 8-9 (“The Eleventh Circuit has also stated that ‘application of the plausibility pleading standard makes particular sense when examining public figure defamation suits [because] [i]n

B. Plaintiff Fails To Meet This Demanding Burden

Turning to the allegations in the Complaint, Project Veritas insists that it states a claim for actual malice “based on the *accumulation and totality* of circumstantial evidence.” Opp. at 39 (emphasis in original). But even taken as a whole, Project Veritas’ factual allegations do not create any plausible inference that Stanford or the University of Washington acted with knowledge that the Blog Post was false or reckless disregard for its veracity.

As set forth in Defendants’ Motions, most of Plaintiff’s allegations of actual malice are conclusory and thus offer no support, alone or as an “accumulation,” for the plausibility of actual malice. *See* Stanford Mot. at 18; UW Mot. at 15-18; Compl. ¶ 166 (recitation of actual malice standard); *id.* ¶¶ 70, 112-20, 167 (actual malice because Video itself shows it is not misleading); *id.* ¶¶ 173-76 (actual malice because universities’ policies prohibit knowingly or recklessly publishing false statements); *see also* *Wynn v. Chanos*, 75 F. Supp. 3d at 1239 (where plaintiff “merely recites an element of slander and does not present any potential supporting facts” that is “insufficient to satisfy the ‘demanding burden’ for pleading actual malice in defamation actions”); *Miller v. Watson*, No. 3:18-CV-00562-SB, 2019 WL 1871011, at *13 (D. Or. Feb. 12, 2019) (“conclusory allegation does not adequately allege actual malice” without “any specific allegations that would support” such a finding); *Planet Aid, Inc. v. Center for Investigative Reporting*, No. 17-cv-03695-MMC, 2021 WL 1110252 at *20 (N.D. Cal. Mar. 23, 2021) (“[E]ven an extreme departure from accepted professional standards of journalism . . . will not suffice to establish actual malice.” (quoting *Newton v. Nat’l Broad. Co.*, 930 F.2d 662, 669 (9th Cir. 1990))). The Opposition neither identifies nor rehabilitates any facts underlying these allegations. *See, e.g.*, Opp. at 38.

Plaintiff also attempts to plead actual malice based on allegations of failure to investigate, Compl. ¶¶ 168-69; failure to retract, *id.* ¶¶ 149, 170; and bias, *id.* ¶¶ 38-47, 172; *see also* Opp. at

these cases, there is a powerful interest in ensuring that free speech is not unduly burdened by the necessity of defending against expensive yet groundless litigation.” (alterations in original) (quoting *Michel*, 816 F.3d at 702 (discussing Project Veritas as a public figure defamation plaintiff)).

38. As set forth in Defendants’ Motions and undisputed in the Opposition, the allegations that the Blog Post authors (a) did not personally reach out to Project Veritas or the individuals identified in the Video, (b) stood by their post despite demands for retraction, and (c) disliked Project Veritas for personal and political reasons (assuming the truth of such bias allegations for purposes of this motion only) provide at most extremely marginal and highly circumstantial support for actual malice. *See* Stanford Mot. at 18-19 & n.9; UW Mot. at 15-19; *Paterson*, 502 F. Supp. 2d at 1146 (under Washington law, critics of “a public figure defamation plaintiff . . . have no affirmative duty to search out the truth or to substantiate their statements, nor are they required to corroborate their sources’ information”); *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 512 (1984) (actual malice judged at time of publication); *Harte-Hanks Commc’ns, Inc. v. Connaughton*, 491 U.S. 657, 665 (1989) (“a newspaper’s motive in publishing a story . . . cannot provide a sufficient basis for finding actual malice”). Further, these allegations are particularly weak here because the Blog Post expressly relied on the fact that certain of the Video’s claims had already “been debunked by subsequent reporting.” Compl. Ex. A at 1. Indeed, both prior to the publication of the Blog Post and prior to the decisions not to retract, there was a plethora of reporting that challenged the Video’s claims, including based on the statements and conduct of the individuals in the Video. Brand Decl. Exs. 4, 6-14.

Plaintiff’s final theory of actual malice is nothing more than an implausible conspiracy theory irrelevant to the question of whether Defendants knew that any statements in the Blog Post were false or recklessly disregarded that likelihood. According to the Opposition, the EIP and the Times “created a plan . . . that EIP would publish its Article claiming that the Video Report was false, which The Times could then use as a basis for its own story repeating and expanding on those claims.” Opp. at 8; *see also* Compl. ¶ 96 (alleging this conspiracy, and nothing else in the Complaint, “[o]n information and belief”); *id.* ¶ 171 (“Defendants also acted with actual malice by publishing a preconceived narrative—working hand in hand with The New York Times to develop the thesis and preconceived storyline before publication.”). But such

1 “preconceived notions . . . do[] little to show actual malice” because they are “not antithetical to
 2 the truthful presentation of facts.” *Jankovic v. International Crisis Group*, 822 F.3d 576, 597
 3 (D.C. Cir. 2016) (internal quotations omitted).

4 Setting aside the fact that such thinly-alleged “collusion” has no relevance to the truth of
 5 the Blog Post’s statements or any awareness by the Defendants of any potential falsity of such
 6 statements, the only factual allegation underlying this fantastical story is that the Times article’s
 7 author received “an advance copy of the Article so she could write a story about it.” Opp. at 8.
 8 But the routine practice of providing a publisher with an advance copy of a blog to encourage
 9 timely news coverage of it hardly evidences malice. Indeed, EIP’s work during the 2020
 10 election was covered by an array of media outlets such as the Associated Press, Bloomberg
 11 News, The Detroit Free Press, National Public Radio, The New York Times, Reuters, The Wall
 12 Street Journal, and The Washington Post. Stanford Mot. at 2 (citing Brand Decl. ¶ 21). “As
 13 between that ‘obvious alternative explanation . . . and the purposeful, invidious” conduct Project
 14 Veritas asks the Court to infer, such conduct “is not a plausible conclusion.” *Iqbal*, 556 U.S. at
 15 682 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 567 (2007)).

16 **V. PLAINTIFF’S SECOND AND THIRD CAUSES OF ACTION ALSO FAIL**

17 In its motion, Stanford explained that Project Veritas’ second cause of action relating to
 18 republication of the Blog Post in *The New York Times* fails along with its first cause of action for
 19 publication of the Blog Post itself. Stanford Mot. at 19; *see also* UW Mot. at 19 (incorporating
 20 argument). Project Veritas appears to agree, similarly stating “Defendants Are Liable for
 21 Defamatory Statements in The Times Articles to the Same Extent They Are Liable for the
 22 Defamatory Statements in the EIP Article Itself.” Opp. at 39. Nevertheless, seeking out
 23 contention, Plaintiff sets up and knocks down an argument made by neither Defendant—*i.e.*, that
 24 the Times “cannot be said to have ‘republished’ the EIP Article because the [Times] articles use
 25 slightly different language in describing and paraphrasing the EIP Article.” *Id.*
 26

1 For the avoidance of doubt, Defendants have simply argued that because they did not
 2 defame Project Veritas in the original Blog Post, they similarly did not defame Project Veritas by
 3 virtue of some aspects of the Blog Post being republished in the Times. Plaintiff’s authorities are
 4 in accord. *See id.*; *Mitchell v. Superior Ct.*, 37 Cal. 3d 268, 281 (1984) (“if a source acting with
 5 actual malice **furnishes defamatory material** to a publisher with the expectation that the material
 6 (either verbatim or in substance) will be published, the source should be liable for the
 7 [re]publication” (emphasis added) (alteration from Opposition)); *Ringler Assocs. Inc. v.*
 8 *Maryland Cas. Co.*, 80 Cal. App. 4th 1165, 1182 (2000) (“the law of defamation . . . does not
 9 require that a defamatory **republishion**, whether written or oral, be a literal or verbatim
 10 duplicate of the **original defamatory statement**” (second emphasis added)).¹⁰

11 Project Veritas offers no defense whatsoever of its third cause of action for respondeat
 12 superior. As set forth in Stanford’s opening brief, respondeat superior is a theory of liability, not
 13 a standalone cause of action, and even if it were separately cognizable it would rise or fall along
 14 with Plaintiff’s defamation causes of action. Stanford Mot. at 20; *see also* UW Mot. at 19
 15 (incorporating argument). In ignoring these points, the Opposition concedes them.

16 VI. CONCLUSION

17 For the reasons set forth above, Defendants respectfully request that the Court dismiss
 18 Project Veritas’ Complaint with prejudice.

22
 23 ¹⁰ Project Veritas repeatedly suggests that it should prevail here because it defeated an anti-SLAPP motion in the
 24 Westchester County trial court in its litigation with the Times that involves some of the same Times articles. *See*
 25 Opp. at 1-2, 9 n.4, 12-13. Four Justices of the New York Appellate Division unanimously issued a stay of discovery
 26 in that action pending their determination of the Times’ appeal of the trial court’s order. *See* Brand Decl. Ex. 17.
 Further, the trial court order is neither pertinent nor persuasive here. *See, e.g.*, UW Mot. at 11 n.7 (that case
 “involved statements made by the New York Times that are not at issue in this case,” and the “court did not conduct
 an analysis of the Video to determine whether, on its face, the Video lacked evidence to substantiate some of the
 claims made by Project Veritas”).

1 DATED this 25th day of March, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED this 25th day of March, 2022.

s/ Lee Brand
Lee Brand